

Noteworthy Changes to Restricted Materials Permitting Policy

Following are some of the significant changes that have been made to current restricted materials permitting policy in this manual:

Chapter 6--Permit Requirements (also refer to section in Appendix C.6 on commodity fumigation)

Section 6.1--General Permit Requirements

Unless otherwise revoked, the restricted materials permit (permit) remains valid through the date specified on the permit even though the person signing the permit on behalf of the permittee is no longer employed by the permittee. However, if the signatory who left employment of the permittee was the certified applicator identified on the permit, the permittee must identify another certified applicator to supervise the use of the restricted material before any further use. This change in interpretation is based on the premise that a valid signature remains valid through the term of the permit.

Section 6.3--Non-Agricultural Use Restricted Materials Permit Requirements

DPR recommends all permits for commodity fumigations at fixed facilities (an industrial use) be issued to the facility operator to properly evaluate potential impacts. Treatment done by either an agricultural or structural pest control business needs to be covered by permit conditions, either directly or through conditions on the facility operator's permit. This is an expansion of the policy established for ProFume (sulfuryl fluoride) in Enforcement Letter 2005-016.

Section 6.3--NOIs for Non-Agricultural Permits

The pesticide use of each non-agricultural permit holder must be inspected at least once per year regardless of the duration of the permit. Either a **site evaluation** or a use inspection may be conducted to meet this requirement. A Notice of Intent (NOI) is not required by regulation for non-agricultural permits, however, the county agricultural commissioner (CAC) has discretion to require an NOI, which may be useful to facilitate inspections. This formalizes an unwritten policy.

Chapter 7--Permit Evaluations

Section 7.1--Environmental Impact Report Functional Equivalency Evaluation Requirements

Before applying for a permit, Title 3, California Code of Regulations (3 CCR) section 6426 requires the permit applicant (grower) and his/her pest control adviser to consider alternatives in section 6426 and **mitigation measures** to reduce the risks of the use of a restricted material. To determine compliance with this requirement, DPR requests that CACs ask the permit applicant to identify the alternative(s) and mitigation measures that were considered and document his/her response. If the applicant acknowledges that they did not consider the alternative(s) and mitigation, the CAC should refuse the permit at this time and direct them to comply with section 6426.

The CAC also needs to determine if there are any additional measures that would further mitigate the hazard. If there are, evaluate if they are reasonable, practical, and effective. If they are feasible, the CAC may issue the permit, conditioned upon use of those additional feasible mitigation measures.

It is DPR's longstanding policy adopted at the initial granting of functional equivalency to consider and apply feasible mitigation measures before requiring the CAC to consider alternatives. However, this does not preclude the CAC from suggesting, or the user from considering, alternatives at any point during the permit process.

Chapter 10--Due Process Related to Permits

Section 10.1--*Due Process As It Relates to Permits--Refusals Based on Evaluation of the Application*

Refusal based upon evaluation of information submitted with a permit application may not require the same procedures to satisfy the due process requirement as actions based on alleged prior violations committed by the applicant. These actions should follow the review and appeal process outlined in Food and Agricultural Code (FAC) section 14009. The permit applicant should be told the reasons for the refusal and be informed of his/her review and appeal rights pursuant to section 14009. A simplified form has been developed to do this.

Appendix C--Recommended Permit Conditions

Section C.1--*General Drift Minimization*

DPR is extending *General Drift Minimization*, a section from *Rice Pesticides*, to include ALL restricted materials. Drift minimization measures are recommended permit conditions for all restricted material pesticides, in addition to the drift minimization measures described on the pesticide label. DPR encourages all applicators to utilize these measures for other pesticides whenever possible to minimize environmental contamination from drift. DPR feels there is a need to be more uniform in the drift control measures recommended by various counties.